

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. B & W Market, Upper Snake River Valley Dairymen's Assn., Inc., Fred's Market, Inc., Jackson Food Market, Boyd P. Wilde, Fred Houchens, Jr., and John J. Nelson., U.S. District Court, D. Wyoming, 1969 Trade Cases ¶72,725, (Feb. 25, 1969)

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United States v. B & W Market, Upper Snake River Valley Dairymen's Assn., Inc., Fred's Market, Inc., Jackson Food Market, Boyd P. Wilde, Fred Houchens, Jr., and John J. Nelson.

1969 Trade Cases ¶72,725. U.S. District Court, D. Wyoming. Civil No. 5258. Entered February 25, 1969. Case No. 2008 in the Antitrust Division of the Department of Justice.

Sherman Act

Conspiracy and Monopoly—Milk Marketing—Retail Sale or Delivery—Consent Judgment.—A dairymen's association and three grocery stores and their managers were prohibited by a consent decree from inducing or coercing any distributor or vendor not to sell or deliver dairy products at retail and from boycotting any person. Additionally, the association, for a period of three years, either must sell and deliver to home customers or make its products available to home vendors.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen.; Baddia J. Rashid and W. D. Kilgore, Jr., Attys., Dept. of Justice.

For the defendants: Robert B. Ranck, of Simpson, Kepler, Simpson & Ranck, Jackson, Wyoming, for B & W Market and Boyd P. Wilde; Ralph L. Albaugh, of Albaugh, Bloem, Smith & Pike, Idaho Falls, Idaho, for Upper Snake River Valley Dairymen's Assn., Inc.; Fred Houchens, Jr., *pro se*, and for Fred's Market; John J. Nelson, *pro se*, and for Jackson Food Market.

Final Judgment

KERR, J.: Plaintiff, United States of America, having filed its Complaint herein on July 8, 1968, and the defendants having appeared and filed their answers to said Complaint, denying the substantive allegations thereof, and plaintiff and said defendants by their respective attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without admission by any party in respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint herein states a claim upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as *the Sherman Act*, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Dairy products" includes homogenized milk, two per cent milk, skim or low fat milk, chocolate milk, buttermilk, half and half, whipping cream, sour cream and cottage cheese and each of them;
- (B) "Person" means any individual, partnership, corporation or other legal or business entity;
- (C) "Distributor" shall mean any person engaged in the business of processing any product and selling or distributing such products to consumers or other purchasers;
- (D) "Vendor" shall mean any person engaged primarily in the business of purchasing dairy products from a distributor and reselling such products to consumers or other purchasers;

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to each of its subsidiaries, successors, assigns, officers, directors, agents, and employees, and to all persons in active concert or participation with the defendant who receive actual notice of this Final *Judgment* by personal service or otherwise.

IV

[Coercion and Boycott]

The defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or participating in any combination, conspiracy, contract, agreement, understanding, plan or program with each other or any other person to:

- (A) Induce or coerce, or attempt to induce or coerce, any distributor or vendor not to sell dairy products at retail and/or not to deliver such products to retail customers;
- (B) Boycott or otherwise refuse to do business with any person.

V

[Sale and Delivery of Products]

Defendant Upper Snake Valley Dairymen's Association, Inc. is ordered and directed for a period of three years, commencing with the date of this Final Judgment, to either (1) sell and deliver products to retail customers or (2) make such dairy products available to any vendor thereof for resale and delivery to retail customers.

VI

[Term of Judgment]

Each of the defendants Boyd P. Wilde, manager of defendant B & W Market, Fred Houchens, Jr., manager of defendant Fred's Market, Inc., and John J. Nelson, manager of defendant Jackson Food Market, shall be bound by the provisions of this Final Judgment for so long as he has an ownership interest in or is employed by his respective market.

VII

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant at its principal office, be permitted:

(A) Access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may, from time to time, be requested. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of plaintiff, except in the source of court proceedings for which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction of carrying out of this Final Judgment, the modification of any provision thereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.